

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JOHNNY WILLIAM BURNETT,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-22-993-D
)	
DAVID BUSS, Warden, ¹ et al.,)	
)	
Respondents.)	

ORDER

Petitioner Johnny William Burnett petitioned this Court for a Writ of Habeas Corpus under 28 U.S.C. § 2254 [Doc. No. 1]. Petitioner is a state prisoner proceeding *pro se*. Respondent David Buss filed a Motion to Dismiss and Brief in Support [Doc. Nos. 12, 13], contending that Petitioner’s Petition was time-barred by the Antiterrorism and Effective Death Penalty Act’s (AEDPA) one-year statute of limitations. *See* 28 U.S.C. § 2244(d)(1). Petitioner filed a Response [Doc. No. 15]. The matter was referred to United States Magistrate Judge Amanda Maxfield Green for initial proceedings in accordance with 28 U.S.C. § 636(b)(1)(B) and (C).

On July 6, 2023, the magistrate judge issued a Report and Recommendation [Doc. No. 17], in which she recommends that Respondent’s Motion to Dismiss be denied. The magistrate judge found that Petitioner was entitled to equitable tolling of AEDPA’s one-

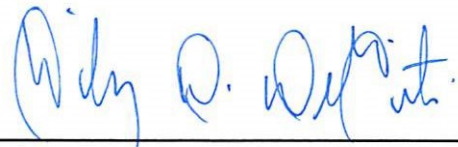
¹ David Buss is the acting warden of Dick Conner Correctional Center, where Petitioner is currently incarcerated. David Buss is substituted as the properly named respondent under 28 U.S.C. § 2242 and Rule 2(a), Rules Governing Section 2254 Cases in the United States District Courts.

year statute of limitations due to: 1) the extraordinary circumstance that Petitioner did not receive the state district court's order denying his application for post-conviction relief until several months after the order was issued; and 2) Petitioner's diligence in pursuing his rights.

Respondent timely filed an Objection to Report and Recommendation [Doc. No. 19]. In his objection, Respondent presents no persuasive argument or authority that would cause this Court to reject the magistrate judge's conclusions. The Court has reviewed the entirety of the Report and Recommendation, as well as the case record, and fully concurs in the Report and Recommendation. Therefore, the Court, having conducted a *de novo* review pursuant to FED. R. CIV. P. 72(b)(3), finds that Respondent's objection should be overruled, and hereby **ADOPTS** the Report and Recommendation [Doc. No. 17] in its entirety.

IT IS THEREFORE ORDERED that Respondent's Motion to Dismiss [Doc. No. 12] is **DENIED**.

IT IS SO ORDERED this 28th day of July, 2023.



TIMOTHY D. DeGIUSTI
Chief United States District Judge